

STATE OF MICHIGAN  
COURT OF APPEALS

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*In re* P. J. FOSTER, Minor.

UNPUBLISHED

March 16, 2017

No. 333638

Wayne Circuit Court

Family Division

LC No. 14-517477-NA

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Before: RIORDAN, P.J., and METER and FORT HOOD, JJ.

PER CURIAM.

Respondent-father appeals as of right an order terminating his parental rights to the minor child, PF, under MCL 712A.19b(3)(b)(i) (the child’s parent caused the child or child’s sibling physical injury, or physical or sexual abuse), (j) (reasonable likelihood, based on conduct or capacity of the parent, that child will be harmed if returned home), and (k)(iii) (battering, torture, or severe physical abuse of the child or the child’s sibling).<sup>1</sup> We affirm.

I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

In December 2015, petitioner, the Department of Health and Human Services (“DHHS”), filed a petition requesting that the trial court exercise jurisdiction over PF and terminate respondent-father’s parental rights. The petition alleged, *inter alia*, that (1) respondent-father was the alleged perpetrator of significant physical abuse, including human bite marks and burns, against PF’s sibling; (2) respondent-father does not have suitable housing; (3) respondent-father does not have the ability to properly care for PF; (4) respondent-father has a violent relationship with respondent-mother; and (5) given these allegations, it is unreasonable to believe that PF will be safe if he is returned to respondent-father. After holding a preliminary hearing, the trial court authorized the petition. PF was placed with his paternal great-grandmother.

In April and May 2016, the trial court held a combined adjudication and statutory basis hearing over two days, taking testimony from (1) respondent, (2) respondent-mother, and (3) Angela Anderson, a child protective services (“CPS”) treatment specialist who formerly was a

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<sup>1</sup> The trial court also terminated the parental rights of PF’s mother, but she is not a party to this appeal. Where relevant, we will refer to the child’s mother as respondent-mother and both parents jointly as “respondents.”

CPS investigator. The court took judicial notice of the entire legal file, which included documents and orders related to the termination of respondent-mother's parental rights to PF's sibling. These documents identified respondent-father as the nonparent abuser of PF's sibling.

The trial court concluded that petitioner had proffered sufficient evidence for the court to exercise jurisdiction over PF under MCL 712A.2(b)(1) and (2), and that petitioner had demonstrated, by clear and convincing evidence, a statutory basis for termination under MCL 712A.19b(3)(b)(i), (j), and (k)(iii). Specifically, the court made the following findings:

The [c]ourt . . . finds by a preponderance of the evidence, the father's criminality also mentioned, domestic violence between mother and father, and father's physical abuse to [PF's] sibling . . . ; based on these factors, [PF] is at risk of harm and the parents' homes are unfit for the child to live in. The Court further finds that the allegations in the [p]etition have been substantiated and the following [s]tatutory grounds to terminate the parental rights of the father . . . and the mother . . . to the child, [PF], have been established by clear and convincing evidence.

In June 2016, after both respondents had participated in court-ordered psychological evaluations, the court held a separate best-interest hearing. After hearing additional testimony from both respondents as well as testimony from respondent-father's grandmother, the court found that termination was in PF's best interests. It reasoned as follows:

The Court finds by a preponderance of the evidence and based on the record as a whole, that terminating the parental rights of [respondent-mother and respondent-father] to the child, [PF], is in the child's best interest. The Court knows that the child is currently placed with paternal great grandmother, which normally would be a reason to not terminate[;] however, the Court considers the magnitude of the abuse [respondent-father] committed on [PF's] sibling per the Court's previous findings and mother's failure to protect. The way a parent treats a sibling of a child is indicative of how he or she treats other children, including their own. There may be a bond with father, but there does not appear to be a significant bond with [PF] and mother. The Court feels that neither parent is able to provide stability, security, and the permanence this child needs, nor have they shown proper parenting abilities. Mother has not complied with the previous court-structured Service Plan for reunification, and there's no reason to believe she will. Nor is there reason to believe that [respondent-father] will, based on his demonstrated character and behavior, and the evaluation of the clinic. There's a significant history of domestic violence, dependence, and co-dependence between the mother and father, and it's the belief of this Court that this child would be subjected to abuse and neglect if ever returned to the care and custody of both parents, and any bond currently between the parents and child is outweighed by this danger. These parents do not demonstrate having the capacity to play a significant, constructive role in this child's life or provide stability, security, structure, and guidance for proper growth and development. Again, the Court considers the evaluations from the Clinic for Child Study, the opinion of the

child's attorney. [PF] needs permanence, stability, security, and finality, and adoption affords [PF] of those necessities.

Accordingly, in June 2016, the court entered an order terminating the parental rights of both respondents.

## II. STATUTORY BASIS FOR TERMINATION

Respondent-father first argues that the record does not include sufficient evidence to support a statutory basis for termination of his parental rights, especially based on the claim that he allegedly abused PF's sibling. He contends that the trial court improperly took judicial notice of the legal file, such that the evidence of physical abuse in those documents was improperly considered, and that the remaining evidence of physical abuse, based on the testimony of respondent-mother at the termination hearing, was insufficient because she was not a credible witness. Additionally, respondent-father argues that termination was premature because petitioner did not offer him a treatment plan. We reject respondent's contentions.

### A. STANDARD OF REVIEW

"This Court reviews for clear error the trial court's factual findings and ultimate determinations on the statutory grounds for termination." *In re White*, 303 Mich App 701, 709; 846 NW2d 61 (2014). "A decision qualifies as clearly erroneous when, 'although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made.' " *In re Williams*, 286 Mich App 253, 271; 779 NW2d 286 (2009), quoting *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003). A clearly erroneous decision must be "more than just maybe or probably wrong." *In re Williams*, 286 Mich App at 271. We must give due regard "to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it." *In re Ellis*, 294 Mich App 30, 33; 817 NW2d 111 (2011).

Additionally, we review a trial court's evidentiary rulings for an abuse of discretion. *In re Jones*, 286 Mich App 126, 130; 777 NW2d 728 (2009). "An abuse of discretion occurs when the trial court chooses an outcome that falls outside the range of principled outcomes." *Id.* (quotation marks and citation omitted).

### B. ANALYSIS

In order to terminate parental rights, the trial court must find that a statutory basis for termination under MCL 712A.19b(3) has been established by clear and convincing evidence. *In re Moss*, 301 Mich App 76, 80; 836 NW2d 182 (2013).

Evidence is clear and convincing when it produce[s] in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established, evidence so clear, direct and weighty and convincing as to enable [the factfinder] to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue. [*In re Martin*, 450 Mich 204, 227; 538 NW2d 399 (1995) (quotation marks and citation omitted; alteration in original).]

Under MCL 712A.19b(3)(b)(i), a court may terminate a respondent's parental rights if it finds clear and convincing evidence that "a sibling of the child has suffered physical injury or physical or sexual abuse," "[t]he parent's act caused the physical injury or physical or sexual abuse[,] and the court finds that there is a reasonable likelihood that the child will suffer from injury or abuse in the foreseeable future if placed in the parent's home." *Id.* at 459-460 (quotation marks omitted), quoting MCL 712A.19b(3)(b)(i). This provision provides grounds for termination even when the respondent is not the parent of the sibling who was abused. *In re Jenks*, 281 Mich App 514, 517, 517 n 2; 760 NW2d 297 (2008). Under MCL 712A.19b(3)(j), a court may terminate a respondent's parental rights if it finds clear and convincing evidence that "[t]here is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent[.]" *In re HRC*, 286 Mich App at 459-460 (quotation marks omitted), quoting MCL 712A.19b(3)(j).

Respondent-father argues that the trial court improperly took judicial notice of the entire legal file, which includes petitions and orders of adjudication and termination (among other documents) concerning PF's sibling, and without this documentation, there was no evidence admitted in this case establishing that respondent-father abused PF's sibling. We disagree.

MRE 201 provides that "[a] judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." It is well established that "a court may take judicial notice of its own files and records[.]" *In re Jones*, 286 Mich App at 129; see also *People v Sinclair*, 387 Mich 91, 103; 194 NW2d 878 (1972) ("A trial court may take judicial notice of any records of the court where it sits."). We find no basis for concluding that the trial court inappropriately took judicial notice of the legal file, especially given the fact that the documentation related to the termination proceedings concerning PF's sibling is included in the *same* lower court file as that involving PF, even though separate petitions were filed and separate hearings were held with regard to each child.

Further, contrary to respondent-father's characterization of the record, he was involved in the proceedings related to PF's sibling, as he was specifically identified as the nonparent abuser in the petitions to terminate respondent-mother's rights to PF's sibling and, at a minimum, received notice of the hearings.<sup>2</sup> Respondent-father's abuse of PF's sibling played a substantial role in the termination of respondent-mother's parental rights to PF's sibling, as termination was based, in large part, on the fact that she permitted ongoing contact between respondent and PF's sibling, which resulted in further abuse. These circumstances also were a primary basis for the petition to terminate both respondents' parental rights to PF. For all of these reasons, reversal is not warranted based on the fact that the trial court took judicial notice of the entire legal file.

Next, we reject respondent-father's claims that there was insufficient evidence to

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<sup>2</sup> Based on the statements of petitioner's attorney at the combined adjudication and statutory basis hearing, it appears that respondent-father also was represented by counsel during the proceedings concerning PF's sibling.

terminate his parental rights. The trial court's findings from the proceedings involving PF's sibling and respondent-mother's testimony at the termination hearing provided ample evidence that respondent abused PF's sibling. Again, the supplemental petition requesting termination of respondent-mother's parental rights to PF's sibling specifically alleged that respondent was the nonparent abuser of the sibling and that respondents' relationship included significant domestic violence. Notably, the petition stated that PF's sibling "has consistently made comments to case worker [sic] and foster parents regarding his mother and non-reporting adult, [respondent], biting him." Likewise, in terminating respondent-mother's parental rights to PF's sibling, the trial court expressly found that respondent-father was a nonparent adult abuser of PF's sibling, and that respondent-mother continued to expose PF's sibling to respondent-father despite this abuse and contrary to the trial court's prior orders. Further, the order of adjudication in that case includes specific findings, based in part on respondent-mother's testimony, that respondents had a violent domestic relationship and that respondent-father had abused PF's sibling, resulting in bite marks and other significant injuries that required hospitalization for five days. In addition to this evidence of abuse from the legal file, PF's mother expressly testified at the termination hearing in the instant case that she believed that respondent-father caused the injuries to PF's sibling. Thus, there is substantial evidence that respondent abused PF's sibling.

Respondent also emphasizes that there is no evidence that he abused PF. However, treatment of a child's sibling is "probative of how he will treat [his or her] other siblings," *In re HRC*, 286 Mich App at 460-461, "[a]nd MCL 712A.19b(3)(b)(i) specifically states that it applies to a child on the basis of the parent's conduct toward the child's siblings," *id.* at 461. Likewise, "grounds for termination are established [under MCL 712A.19b(3)(b)(i)] when the parent against whom termination is sought is responsible for the physical injury or physical or sexual abuse of a sibling of the minor child, regardless of whether that parent is also a parent of the injured or abused sibling." *In re Jenks*, 281 Mich App at 518 n 2. Thus, the evidence demonstrating respondent-father's abuse of PF's sibling provided grounds for termination of respondent-father's parental rights to PF.

Respondent-mother also testified to an extensive history of domestic violence between her and respondent-father, which further supports the court's finding that there was a likelihood of harm to PF if he were placed in respondent-father's care. Respondent-father argues that respondent-mother is not a credible witness. However, "[i]n reviewing the circuit court's decision, [this Court] also must give 'due regard to the trial court's special opportunity to observe the witnesses.'" *In re Dearmon*, 303 Mich App 684, 700; 847 NW2d 514 (2014), quoting *In re BZ*, 264 Mich App 286, 296-297; 690 NW2d 505 (2004).

Specifically, respondent-mother testified that her relationship with respondent-father included instances of significant violence. She admitted that respondent-father physically struck her. She also testified that he choked her more than three times, and possibly more than five, just in the time that they had stopped living together, and that he choked her to the point of unconsciousness on one occasion. She confirmed that she was in fear for her life when respondent choked her. She described an instance when she went to respondent-father's residence to retrieve PF, and respondents physically fought, throwing "punches and slaps." During the altercation, respondent-father choked her and struck her legs with a golf club. PF was in the house, in another room, when this incident occurred. Respondent-mother also stated that she did not want PF to have contact with respondent-father until he "gets [him]self together"

“mentally.” Although respondent-father denied that they had a violent relationship, and denied hitting or otherwise harming respondent-mother, we must defer to the trial court’s credibility determinations. *In re HRC*, 286 Mich App at 459 (“We give deference to the trial court’s special opportunity to judge the credibility of the witnesses.”).

In sum, the record contains substantial evidence that respondent physically abused PF’s sibling. It also contains significant evidence of respondent’s violent disposition, providing extensive support for the trial court’s finding that PF would be at a risk of harm if he were returned to respondent’s care. Thus, the trial court did not clearly err in concluding that petitioner had established a statutory basis for the termination of respondent’s parental rights under MCL 712A.19b(3)(b)(i) and (j) by clear and convincing evidence. See *id.* at 459-460.<sup>3</sup>

Respondent also argues that termination was premature because DHHS did not offer him a parent-agency treatment plan. We disagree. Reasonable efforts to reunify a parent and child and rectify the conditions that led to the child’s removal must be made “in all cases” except those involving aggravated circumstances. MCL 712A.18f(1), (2), (4); MCL 712A.19a(2). Aggravated circumstances include, among other things, “[b]attering, torture, or other severe physical abuse” of a child or sibling of a child. MCL 722.638(1)(a)(iii). See also MCL 722.638(2), (3); *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010); *In re Moss*, 301 Mich App 76, 90-91; 836 NW2d 182 (2013). “[P]etitioner can request termination in the initial petition,” *In re Moss*, 301 Mich App at 91, citing MCL 712A.19b(4) and MCR 3.961(B)(6), and reunification efforts are not required “when termination of parental rights is the agency’s goal,” *id.* (quotation marks and citation omitted). Pursuant to MCR 3.977(E), the court shall order termination of respondent’s parental rights at the initial dispositional hearing, and no additional reunification efforts shall be made, if:

(1) the original, or amended, petition contains a request for termination;

(2) at the trial or plea proceedings, the trier of fact finds by a preponderance of the evidence that one or more of the grounds for assumption of jurisdiction over the child under MCL 712A.2(b) have been established;

(3) at the initial disposition hearing, the court finds on the basis of clear and convincing legally admissible evidence that had been introduced at the trial or plea proceedings, or that is introduced at the dispositional hearing, that one or more facts alleged in the petition:

(a) are true, and

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<sup>3</sup> Because “[o]nly one statutory ground need be established by clear and convincing evidence to terminate a respondent’s parental rights,” *In re Ellis*, 294 Mich App at 32, we need not separately consider whether the trial court properly terminated respondent-father’s parental rights under MCL 712A.19b(3)(k)(iii).

(b) establish grounds for termination of parental rights under MCL 712A.19b(3)(a), (b), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), or (n);

(4) termination of parental rights is in the child's best interests.

See also *In re Moss*, 301 Mich App at 91.

Here, petitioner sought termination in the initial petition. The trial court found that there were grounds to assume jurisdiction over PF by a preponderance of the evidence. It further found that statutory grounds for termination had been established by clear and convincing evidence. Lastly, the trial court determined that termination of respondent's parental rights was in PF's best interests. Because the elements of MCR 3.977(E) were met, DHHS was not required to offer reunification services. *In re Moss*, 201 Mich App at 91-92.

### III. BEST INTERESTS

Respondent-father argues that the trial court clearly erred when it found that termination of his parental rights was in PF's best interests. We disagree.

#### A. STANDARD OF REVIEW AND APPLICABLE LAW

We review for clear error a trial court's best-interest determination. *In re White*, 303 Mich App at 713, citing MCR 3.977(K). Pursuant to MCL 712A.19b(5), "[t]he trial court must order the parent's rights terminated if the [petitioner] has established a statutory ground for termination by clear and convincing evidence and it finds from a preponderance of the evidence on the whole record that termination is in the child[']s best interests." *In re White*, 303 Mich App at 713 (footnotes omitted). When it makes a best-interest determination, the trial court should weigh all available evidence, *id.*, and the trial court's focus should be on the child rather than the parent, *In re Moss*, 301 Mich App at 86-87.

To determine whether termination of parental rights is in a child's best interests, the court should consider a wide variety of factors that may include "the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home." The trial court may also consider a parent's history of domestic violence, the parent's compliance with his or her case service plan, the parent's visitation history with the child, the children's well-being while in care, and the possibility of adoption. [*In re White*, 303 Mich App at 713-714 (footnotes omitted); see also *In re Olive/Metts Minors*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012).]

Also, a parent's history of child abuse and neglect may be considered in determining a child's best interests. *In re Powers Minors*, 244 Mich App 111, 120; 624 NW2d 472 (2000).

#### B. ANALYSIS

Respondent contests the trial court's best interest determination based on the fact that he shared a bond with PF and that PF was placed with a relative. He argues that there was insufficient evidence that termination was in the best interests of the child, especially considering

the relative placement. “ ‘[A] child’s placement with relatives weighs against termination under MCL 712A.19a(6)(a)[.]’ ” *In re Olive/Metts*, 297 Mich App at 43, quoting *In re Mason*, 486 Mich at 164. Thus, if a child is living with relatives when the termination hearing occurs, that fact is an “explicit factor” that the trial court must consider in determining whether termination is in the child’s best interests. *Id.* “A trial court’s failure to explicitly address whether termination is appropriate in light of the children’s placement with relatives renders the factual record inadequate to make a best-interest determination and requires reversal.” *Id.* However, the trial court is not required to place a child with relatives in lieu of terminating parental rights. *In re Olive/Metts*, 297 Mich App at 43; *In re IEM*, 233 Mich App 438, 453; 592 NW2d 751 (1999), overruled on other grounds *In re Morris*, 491 Mich 81, 121; 815 NW2d 62 (2012). “If it is in the best interests of the child, the probate court may properly terminate parental rights instead of placing the child with relatives.” *In re IEM*, 233 Mich App at 453; see also *In re Olive/Metts*, 297 Mich App at 43.

Here, the trial court expressly recognized respondent-father’s bond with PF and PF’s placement with his paternal great-grandmother. However, the court found that the severity of the abuse perpetrated by respondent-father against PF’s sibling, the history of domestic violence between respondent-father and respondent-mother, respondent-father’s failure to demonstrate proper parenting abilities, and respondent-father’s inability to provide a safe and stable environment for PF outweighed those considerations and favored termination. The court found that there was no reason to believe that respondent would comply with a reunification plan “based on his demonstrated character and behavior[] and the evaluation of the clinic.” A review of the record confirms that the trial court’s findings were not clearly erroneous.

Respondent-father counters that the trial court failed to sufficiently consider his bond with the child and his parenting abilities. He highlights the great-grandmother’s testimony and his own testimony regarding the frequency with which he visited PF, the supplies and money that he provided for the child’s care, his connection with the child, and the specific ways in which he has cared for PF. Respondent fails to recognize that his testimony regarding his visitation with PF and the materials that he provided for PF was inconsistent with the testimony of other witnesses and partially inconsistent with his own testimony. Moreover, the extent of respondent-father’s bond with the child is questionable, especially considering, for example, the fact that he was unable to accurately state PF’s birthday—estimating that PF was born in November 2015 when he was actually born in February 2015—and the fact that he was unable to specify any of PF’s favorite foods or express any certainty regarding PF’s progress toward developmental milestones during his psychological evaluation.<sup>4</sup>

Further, significant evidence outweighed respondent-father’s bond with the child and his general parenting skills. Most importantly, respondent-father continued to deny any history of physical abuse or domestic violence despite evidence demonstrating that he severely abused PF’s

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<sup>4</sup> The Clinic for Child Study report for respondent-father was admitted without objection at the best-interest hearing.

sibling by, among other things, biting his genital region<sup>5</sup> and respondent-mother's testimony that respondent hit and choked her on multiple occasions. The psychologist who performed respondent-father's Clinic for Child Study evaluation diagnosed him, "at least provisionally," with Intermittent Explosive Disorder and Antisocial Personality Disorder. The psychologist also noted that respondent-father's "insight and judgment is profoundly lacking and it is unlikely that [he] will make any substantial changes to his lifestyle." Accordingly, the psychologist recommended that permanency planning proceed in order to give PF "safety and stability away from his parents' unsettling lifestyle choices."

Respondent-father's grandmother, who was caring for PF, unequivocally testified that she did not believe that respondent was in a position to fully care for PF on his own, even though he shared a bond with the child. The evidence also clearly showed that PF had formed a bond with his great-grandmother, and she was willing to continue caring for him.

While a parent has a fundamental interest in caring for his or her child, "at the best-interest stage, the child's interest in a normal family home is superior to any interest the parent has." *In re Moss*, 301 Mich App at 86, 89. The record shows that the trial court considered respondent-father's bond with PF and PF's placement with his great-grandmother, but found that the risk of harm to PF—given respondent's history of abuse and questionable ability to safely care for PF—and PF's need for a nonviolent and stable home environment demonstrated that termination of respondent's parental rights was in PF's best interests. For all of the foregoing reasons, the trial court did not clearly err in so finding.<sup>6</sup>

#### IV. CONCLUSION

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<sup>5</sup> Additionally, respondent-mother's Clinic for Child Study evaluation, which also was admitted without objection at the best-interest hearing, includes a detailed description provided by respondent-mother regarding how she knew that respondent-father bit PF's sibling. Specifically, she stated that respondent was the last person with PF's sibling before the abuse and respondent " 'ha[d] a habit of biting.' "

<sup>6</sup> We note that respondent briefly argues that a legal guardianship should have been considered as an alternative to termination in this case, and that the trial court "should have only taken *temporary wardship* . . . ." Because respondent failed to raise these arguments in his statement of the questions presented, and failed to sufficiently brief these claims by citing supporting authority and providing more than a cursory argument, we deem them abandoned. See MCR 7.212(C)(5); *In re ASF*, 311 Mich App 420, 440; 876 NW2d 253 (2015); *In re TK*, 306 Mich App 698, 712; 859 NW2d 208 (2014). Nevertheless, we note that a trial court is not required to consider the establishment of a guardianship when it is in the child's best interests to terminate the respondent's parental rights. See MCL 712A.19a(7).

Respondent has failed to establish that any of his claims on appeal warrant relief.

Affirmed.

/s/ Michael J. Riordan

/s/ Patrick M. Meter

/s/ Karen M. Fort Hood